UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

LUDLOW CORPORATION )
and )
THE LUDLOW COMPANY LP, )
Plaintiffs )
)
v. )
)
CONMED CORPORATION )
Defendant )

00CV10167GAO

CIVIL ACTION NO. _____

COMPLAINT AND DEMAND FOR JURY TRIAL

This is an action for patent infringement and breach of patent license involving a product used in medical applications.

**Parties, Jurisdiction and Venue**

1. The plaintiff is Ludlow Corporation, a Massachusetts corporation with its principal place of business at Two Ludlow Park Drive, Chicopee, Massachusetts ("Ludlow").

2. The co-plaintiff is The Ludlow Company LP, a Delaware limited partnership to which the assets of Ludlow were transferred in a corporate reorganization. It has the same place of business as Ludlow. It also will be referred to as "Ludlow".

3. The defendant is ConMed Corporation, a corporation organized under New York law with its principal place of business at 310 Broad Street, Utica, New York ("ConMed").

4. Jurisdiction is based upon 28 U.S.C. §1338 in that this is an action for patent infringement under 35 U.S.C. §§281 *et seq.*

5. Venue is properly laid in this judicial district pursuant to 28 U.S.C. §§1391 (b) and (c) and 1400 (b) in that the defendant is subject to personal jurisdiction pursuant to Massachusetts General Laws, c. 223A.

**Averments Common to All Counts**

6. Medtronic, Inc. ("Medtronic") is a publicly-owned corporation with its principal place of business in Minneapolis, Minnesota. In 1993, it owned and operated a subsidiary and a division, named, respectively, Medtronic Andover Medical, Inc. ("AMI") and Medtronic Promeon Medical Division ("Promeon"). Insofar as relevant to this case, AMI manufactured and sold an electrode used for medical applications named FASTRACE 4, and Promeon manufactured and supplied a gel necessary for the manufacture of the FASTRACE 4 electrode named 63B Gel, which is a hydrogel product using AMPS gel technology, so-called. The FASTRACE 4 electrode was not and could not be manufactured without the 63B Gel, the latter containing special adhesive and conductive characteristics associated with the FASTRACE 4 electrode. Both the FASTRACE 4 electrode and 63B Gel were proprietary to Medtronic, originating in two U.S. Patents owned by Medtronic numbered 4,391,278 issued July 5, 1983 (the '278 Patent) and 4,581,821 issued April 15, 1986 (the '821 Patent), which broadly claim electrodes (including a particular gel member) and methods of preparing conductive materials (gels) for

electrodes (together, the "Medtronic Patents"). Among its other business operations, Promeon sold 63B Gel to AMI for use in the manufacture of FASTRACE 4 electrodes.

7. On or about June 10, 1993, Medtronic agreed to sell all of the assets of AMI to ConMed and a single purpose entity owned by ConMed named ConMed Acq. Inc. (together, "ConMed"). As part of the consummated transaction, Medtronic entered into a license agreement dated July 12, 1993 with ConMed, a copy of which is annexed hereto as Exhibit 1 (the "ConMed License").

8. The ConMed License granted ConMed the right to make, use and sell "Licensed Products" for the uses which, as of July 12, 1993, were then currently being used by the "Business". *Exhibit 1, ¶2.1.* "Licensed Products" was defined as those gel products being manufactured by the "Business" as of July 12, 1993 which were protected under the Medtronic Patents. (Emphasis supplied). "Business" was defined as the business and operations of AMI that ConMed was acquiring under its June 10, 1993 Asset Purchase Agreement. The ConMed License only permitted ConMed to manufacture a limited number of AMPS gels, those that were actually manufactured by AMI at the time of the closing.

9. 63B Gel was not manufactured by AMI on July 12, 1993, but was rather manufactured by Promeon and sold to AMI on and before July 12, 1993.

Article 2.2 of the June 10, 1993 Asset Purchase Agreement expressly excluded from the sale to ConMed any gel products of Promeon.

10. In order for the FASTRACE 4 Business to continue following its sale to ConMed, Medtronic and ConMed entered into a supply agreement, also dated July 12, 1993, which obligated Medtronic or its affiliates to supply 63B Gel, among other hydrogel products, to ConMed in all needed quantities at specified price points (the Supply Agreement" Again, Article 2.2 of the June 10, 1993 Asset Purchase Agreement specifically stated that the provision of gel products was to be accomplished pursuant to the Supply Agreement.

11. On or about February 24, 1994, Ludlow entered into an agreement with Medtronic to purchase the assets of Promeon. As of that same date, Ludlow and Medtronic entered into a license agreement, a copy of which is annexed hereto as Exhibit 2 (the "Ludlow License").

12. The Ludlow License granted Ludlow the exclusive right to make, use and sell certain hydrogel products under the Medtronic Patents (the '278 and '821 Patents, among others), specifically excepting those gel products which ConMed was permitted to make, use and sell under the ConMed License. In fact, Section 2.1(c)(i) of the Ludlow License expressly provides that:

> "ConMed's license rights from Medtronic are restricted to the gel products manufactured by Medtronic Andover Medical, Inc. as of July 12, 1993 which

would, but for the license granted, infringe the Licensed Patent Rights as defined in the ConMed License."

13. Accordingly, Ludlow had the exclusive license for 63B Gel and ConMed was not then and is not now licensed or otherwise entitled to make, use or sell 63B Gel. Moreover, the manufacture and sale of 63B Gel for use in the FASTRACE 4 electrode was a material part of the Business Ludlow purchased from Medtronic.

14. After Ludlow's acquisition of the assets of Promeon in February, 1994, it began to sell 63B Gel to ConMed for use in ConMed's manufacture of the FASTRACE 4 electrode. Through November, 1997, Ludlow sold $2,387,726 of 63B Gel to ConMed for the FASTRACE 4 electrode. After November, 1997, ConMed discontinued the purchase of 63B Gel from Ludlow for the FASTRACE 4 electrode.

15. From December, 1997 to date, ConMed has continued to make and sell the FASTRACE 4 electrode (its product no. 1915-100, among others), using a gel that chemically and functionally matches 63B Gel, reflecting the precise AMPS gel technology exclusively licensed to Ludlow.

16. Ludlow did not immediately learn that ConMed was continuing to make and sell the FASTRACE 4 electrode with AMPS based gel manufactured by or for ConMed. After an investigation and consultation with Medtronic, Kendall notified ConMed that it was in breach of its License by letter dated